*** HON'BLE SRI JUSTICE B.PRAKASH RAO**

+ WRIT PETITION NO.5006 OF 2004

%Dated 21-02--2005

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V.P.Raju, S/o.V.R.Raju, C/o.8-2-269/19/381/B, Road No.2, Banjara Hills, Hyderabad.

...APPELLANT

VERSUS

$ 1 Second Appellate Authority u/s 48 (3) of A.P. Shops & Establishments Act & Deputy Commissioner of Labour (Twin Cities), T. Anjaiah Bhavan, RTC Cross Roads, Hyderabad.
2 K.S. Rama Rao, Secretary, Film Nagar Cultural Center, Filmnagar, Road No.6, Jubilee Hills, Hyderabad.
3 Prabhakar Rao, Manager, Filmnagar Cultural Centre, Filmnagar, Road No.6, Jubilee Hills, Hyderabad.

...RESPONDENTS

@ Counsel for Appellant: MR. K.BALAGOPAL

^ Counsel for Respondent No.1: GP For Labour

Counsel for Respondent Nos.2 & 3: MR.V.HARI HARAN

< GIST:

> HEAD NOTE:

? Cases referred

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*** HON'BLE SRI JUSTICE B.PRAKASH RAO**

+ CONTEMPT CASE NO.1664 OF 2004

%Dated 21-02--2005

-

V.P.Raju, S/o.V.R.Raju, C/o.8-2-269/19/381/B, Road No.2, Banjara Hills, Hyderabad.

...APPELLANT

VERSUS

$ 1 K.S. Rama Rao, Secretary, Film Nagar Cultural Center, Filmnagar, Road No.6, Jubilee Hills, Hyderabad.

2 Prabhakar Rao, Manager, Filmnagar Cultural Centre, Filmnagar,
Road No.6, Jubilee Hills, Hyderabad.

...RESPONDENTS

@ Counsel for Appellant: MR. K.BALAGOPAL

^ Counsel for Respondents: MR.V.HARI HARAN

< GIST:

> HEAD NOTE:

? Cases referred

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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 5006 of 2004 & C.C.No.1664 of 2004

WRIT PETITION NO : 5006 of 2004:

Between:

V.P. Raju, S/o V.R. Raju
C/o 8-2-269/19/381/B, Road No.2, Banjara Hills, Hyderabad.

..... PETITIONER

AND

1 Second Appellate Authority u/s 48 (3) of A.P. Shops & Establishments Act & Deputy Commissioner of Labour (Twin Cities), T. Anjaiah Bhavan, RTC Cross Roads, Hyderabad.
2 K.S. Rama Rao, Secretary, Film Nagar Cultural Center, Filmnagar, Road No.6, Jubilee Hills, Hyderabad.
3 Prabhakar Rao, Manager, Filmnagar Cultural Centre, Filmnagar, Road No.6, Jubilee Hills, Hyderabad.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order, direction or writ in the nature of writ of certiorari calling for the records in I.A.No. 24/2003 in S.A.No. 6/2003 on the file of the first respondent and set aside

the order dated 12-12-2003 insofar as it pertains to I.A.No. 24/2003 .

Counsel for the Petitioner:MR.K.BALAGOPAL

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondents 2 & 3: MR. V.HARI HARAN.

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CONTEMPT CASE NO : 1664 of 2004

(Contempt Case U/s. 10 to 12 of Contempt of Courts Act to punish the Respondents herein for violating, disobeying the Order of the High Court dated 22.07.2004 in WPMP No.6541 of 2004 in WP No. 5006 of 2004.

Between:

V.P. Raju, S/o V.R. Raju
C/o 8-2-269/19/381/B, Road No.2,
Banjara Hills, Hyderabad.

..... PETITIONER

AND

1 K.S. Rama Rao
Filmnagar Cultural Centre Filmnagar, Road No.6,
Jubilee Hills, Hyderabad.
2 Prabhakara Rao,
Filmnagar Cultural Centre Filmnagar, Road No.6,

Jubilee Hills, Hyderabad.

.....RESPONDENT(S)

Counsel for the Petitioner: MR.K.BALAGOPAL

Counsel for the Respondents: MR.V.HARI HARAN

The Court made the following:

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

WRIT PETITION NO.5006 OF 2004 AND C.C.No.1664 OF 2004

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COMMON ORDER:

Heard Sri K.Balagopal, the learned counsel appearing for the petitioner and Sri V.Hari Haran, the learned counsel appearing on behalf of the contesting respondents 2 and 3.

The short question, which arises for consideration in this writ petition after hearing the counsel on either side, is the scope and applicability of second proviso to sub-section (3) of Section 48 of the A.P. Shops and Establishments Act, 1988 (for short 'the Act').

The facts leading to the case are that the petitioner is an employee with the respondents 2 and 3 herein and he was removed from service by the second respondent on 07.12.2001, against which, he filed an appeal under Section 48(1) of the Act and ultimately the same was allowed as per the orders in S.E.Case No.1 of 2001, dated 02.06.2003 directing reinstatement of the petitioner into service with 1/3rd back wages. Challenging the same, the respondents-Management filed the second appeal before the second appellate authority under Section 48(3) of the Act, which was taken up as S.A. Case No. 6 of 2003. During the pendency thereof, the petitioner has filed two applications vide I.A.Nos.23 and 24 of 2003 seeking for payment of the entire back wages as ordered. Of these applications, I.A.No.23 of 2003 was allowed by directing the respondents to deposit the remaining back wages, however, dismissed the other application in I.A.No.24 of 2003 by a common order holding that the petitioner is not entitled to wages last drawn, in spite of the fact that according to him, the petitioner was out of employment. As against the said orders, the present writ petition is filed, *inter alia,* claiming that as provided under the

aforesaid provisions, he is entitled to the wages last drawn by him during pendency of the proceedings before the appellate authority. Initially, at the time of admission, this Court granted interim directions as per the orders in W.P.M.P.No.6541 of 2004, dated 22.07.2004 to pay his last drawn wages as per the aforesaid provisions pending the writ petition. Since the said order was not complied with by the respondents, the petitioner has filed the contempt in C.C.No.1664 of 2004. After order of notice before admission and filing of the counter by the respondents, both the counsel requested for taking up the main case itself for disposal along with the contempt case having regard to the involvement of virtually common questions.

Sri K.Bala Gopal, the learned counsel appearing for the petitioner, submits that irrespective of the fact of the merits, the law provides under the aforesaid provision for payment of the last wages drawn and therefore, rejection of the claim by the second appellate authority is in the teeth of the second proviso to the sub-section (3) of Section 48 of the said Act.

Sri V.Hari Haran, the learned counsel appearing for the respondents 2 and 3 submits that the petitioner has already been paid the substantial amounts towards the back wages and further the second appeal itself was already heard and disposed of and therefore the question becomes otiose.

On perusal of the second proviso to sub-section (3) of Section 48 of the Act, which reads as follows:

> "Provided further that if the second appeal is against the order of reinstatement given by the appellate authority under sub-section (2), the employee shall be entitled to wages last drawn by him during the pendency of the proceedings before the appellate authority".

It amply makes clear that during pendency of the second appeal filed against the order of reinstatement, which was passed by the first appellate authority, the employee is held to be entitled to wages last drawn by him during pendency of the

proceedings before the appellate authority. There cannot be any dispute in regard to the express madate as provided thereunder. It comprehends more against the Management to comply the said requirement on par with the other requirements as contemplated under the main provision for hearing any such appeal and further there exists neither any exception nor any relaxation provided for. Apparently, the Legislation thought it fit with an avowed object of providing the financial support to the employee, though earlier removed from service but having been reinstated, he should not be denied of the same and it also touches upon the very sustenance of such employee more so on the face of order of reinstatement passed in favour of the employee. It is also now well established that normally during the pendency of appeal, the fruits of any such order or decree cannot be denied under exceptional circumstances. However, even on this count, the Statute steps in and puts a bar against the employer to deny any such last drawn wages. Therefore, there is no escape for employers from redeeming themselves of the liability as contemplated thereunder. No discretion has also been left with such appellate authority. In the circumstances, it has to be held that the provision as made for payment of last drawn wages is mandatory and the petitioner is entitled to the same. Therefore, the second appellate authority having ordered for payment of back wages, could have as well in the same breadth included for wages last drawn. It is also to be mentioned that the compliance of nature as provided whereunder has nothing to do either on merits of the case of each side or the ultimate result in such appeal. Therefore, the submission as made by the learned counsel appearing for the respondents 2 and 3 that the appeal has already come to an end will not have any bearing to deny or deprive the legitimate entitlement as provided under such beneficial piece of Legislation.

The writ petition is, accordingly, allowed, directing the respondents 2 and 3 to pay the full last wages drawn by the petitioner as claimed. No costs.

Having taken up the main writ petition itself and the same being allowed, it is not necessary to go into at this stage as to whether there is any contempt or otherwise since the interim direction given now stands merged with the final order. Further, in case, the respondents do not comply the direction as given above, it shall open for the petitioner to file any fresh proceedings for contempt.

B. PRAKASH RAO, J

21st February 2005.

Chvn.

Note: L.R. copy to be marked.

That Rule NISI has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on Mondays the twenty first day of February two thousand and five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

One Fair Copy to the Honourable Mr Justice B.PRAKASH RAO (For His LordShips Kind Perusal).

To

1 The Assistant Commissioner of Labour, Hyderabad-III,Second Appellate Authority u/s 48 (3) of A.P. Shops & Establishments Act & Deputy Commissioner of Labour
(Twin Cities), T. Anjaiah Bhavan, RTC Cross Roads, Hyderabad.

2. Two C.Cs. to the G.P. for Labour, High Court Buildings, Hyderabad(OUT).

3. 8 LR Copies.

4. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

5. The Secretary, A.P.Advocates Association Library, High Court Buildings, Hyderabad.

6. Two C.D. copies.